

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 423 OF 2006
IN
SUIT NO. 83 OF 2006

Achra Investments Pvt. Ltd. ..Plaintiffs
versus
Gul Kachharam Achra & Ors. ..Defendants

Mr. R. S. Apte i/b. Mr. N. R. Bubna for the
Plaintiff.

Mr. N. J. Ratnani i/b. M/s. Ashwin Ankhad &
Associates for the Defendant Nos. 1 and 2.

Mr. Virag Tulzapurkar with Ms. Alpana Ghone i/b.
M/s. Kanga & Co. for the Defendant Nos. 3 to 7.

CORAM : S. J. VAZIFDAR, J.
DATE : 11TH SEPTEMBER, 2007

P.C.

1. The suit is filed for a declaration that the Plaintiff is the exclusive and absolute owner of 990 shares in Defendant No.3 and that the same have been fraudulently transferred in favour of the Defendant No.1. Reliefs consequent to the alleged fraudulent transfer have been claimed. The Plaintiff has also sought an injunction restraining the Defendants from alienating, transferring, encumbering etc. various properties of Defendant No.3.

2. According to the Defendants on 17.1.1993, the Plaintiff transferred the said 990 shares to Defendant No.1. The said 990 shares constitute 22% of the issued subscribed and paid up capital of Defendant No.3.

3. Various other members of the family of Defendant No.1 had also instituted separate proceedings challenging the alleged transfer of the shares by them to the Defendant No.1. I am informed that no interim orders have been passed in any of those proceedings.

4. As far as the orders restraining the Defendants from dealing with the property are concerned, the same is covered against the Plaintiff inter alia by an order passed by D. K. Deshmukh, J. dated 25.4.2005 in a group of Notices of Motion, the first of which is Notice of Motion No. 3264 of 2004 in Suit No. 3166 of 2004. The learned Judge has held that in the facts of this case there would be no question of granting any injunction as even if the Plaintiffs are held to be the holders of 990 shares they would not get any interest in the

property of the company.

5. This leads to the question of the alleged transfer of the said 990 shares by the Plaintiff to Defendant No.1 on 17.1.1993. Defendant Nos. 1 and 2 in turn have sold all their shares in Defendant No. 3 to Defendant Nos. 4, 5, 6 and 7 for an aggregate consideration of Rs.10 crores which has been paid to the Defendant Nos. 1 and 2.

6. Disputes between the members of the Achra family have been going on since atleast 1991. A Public Notice was issued on behalf of one Ramchandra K. Achra and one Madhu K. Achra alleging that Defendant No.1 was fraudulently attempting to sell, transfer etc. certain properties without their consent. The said Ramchandra K. Achra is a Director of the Plaintiff which admittedly is a closely held Company of the Achra family.

7. The transfer of the shares by the Plaintiff to Defendant No.3 was effected in the records of the Company on 22.5.2002.

8. The Advocates of Defendant Nos. 4 to 7

issued a public notice on 17.10.2003 stating that their clients had instructed them to investigate the title of Defendant No.3 to the suit property and invited objections. By a letter dated 29.10.2003 the Plaintiff's advocates objected to the same stating that they along with other members of the family held 47.5% shares in Defendant No.3 and that they had not participated in any resolution or other proceedings for the sale of the said property.

9. Surely, at this stage, one would have expected the Plaintiffs to investigate the records of the Company and to take steps to protect their alleged 47.5% shareholding in Defendant No.3. They allegedly did not do so. There is no explanation for the same either.

10. It is further important to note that the Plaintiff had in fact filed Special Suit No. 69 of 1998 against the Defendant Nos. 1, 2 and various other members of the Achra family. By prayer (f) the Plaintiff had sought a declaration that the transfer of shares as shown in a letter dated 17.2.1998 is illegal, fraudulent, contrary to law and therefore not binding on the Plaintiff. The

letter dated 17.2.1998 annexed as Exhibit 'B' to the Plaintiff is addressed by Defendant No.1. In the said letter it is specifically stated that the Plaintiff had sold all his shares inter alia in "Odeon Theatre". Odeon Theatre is owned by Defendant No.3. The reference obviously was to the shares of Defendant No.3. Zerox copies of the transfer forms were also enclosed. I will presume that the transfer forms were not in fact annexed to the letter. However, surely, at least at this stage the Plaintiff ought to have asked for the same. The Plaintiff did no such thing.

11. The present suit was filed only on 22.11.2005. It is true that on 22.11.2004 the Plaintiff had filed an application in the said Special Suit No. 69 of 1998 for deleting prayer (f) and for liberty to institute appropriate proceedings for the same. The application was rejected. Against the order, the Plaintiff filed Writ Petition No. 134 of 2005. By an order dated 14.8.2005 this Court inter alia observed that the cause of action for institution of appropriate proceedings being subsequent to the date of filing of the suit, no liberty was necessary. A copy of the Order however

has not been furnished. I will presume what is stated in respect thereof in paragraph 14 of the Plaintiff, is correct.

12. The fact however remains that the Plaintiff at least in 1998 was aware that Defendant No.1 had expressly asserted that these shares had been transferred in his favour. Despite the same no proceedings were taken atleast till November, 2004.

13. In the meantime the Defendant Nos. 4 to 7 as a result thereof altered their position to their detriment substantially. They have already paid Rs.10 crores for the purchase of the said shares. Even after the issue of the public notice dated 17.10.2003, no proceedings were adopted for over a year. Thereafter, Defendant Nos. 4 to 7 have demolished the old construction and put up a new construction in its place. The construction consists of a two level basement and six upper floors. Construction has been completed till the fifth floor. Various third party rights have been created for / on behalf of the Defendant Nos. 4 to 7. For instance rights have been created in favour of one PVR Limited by a MOU dated 18.12.2004. PVR

Limited intends running a multiplex theatre occupying four levels. Needless to say that the construction thereof is specialised in nature. It is not a normal commercial complex. In the circumstances, I am not inclined to grant any interim reliefs as sought.

14. Mr. Apte relied upon the fact that the Plaintiff's Advocate had by a letter dated 29.10.2003 responded to the public notice.

15. The fact remains however that the Plaintiff took no effective steps to protect its alleged rights and did not even specify the nature of some of the technical defences now sought to be raised.

16. There is nothing on record to suggest that there was any collusion between Defendant Nos. 4 to 7 on the one hand and Defendant Nos. 1 and 2 on the other. The mere fact that the Plaintiff's Advocates had by their letter dated 29.10.2003 responded to the Defendants Public Notice published on 17.10.2003 would not indicate negligence on the part of Defendant Nos. 4 to 7 either. Indeed, the negligence, if any, is on the part of the Plaintiff

for not having pursued the matter at all after 29.10.2003 despite the fact that serious disputes were going on between the parties.

17. The transfer of the said shares by the Plaintiff to the Defendant No.1 is also challenged on the ground that the original shares are with the Plaintiff and that the duplicate shares had been issued contrary to the provisions of the Companies Act. It is further alleged that the transfer of shares is contrary to Section 108 of the Companies Act in as much as the share transfer forms have not been attested and have not been duly stamped.

18. It is pertinent to note that these challenges are to the transfer between the Plaintiff and Defendant Nos. 1 and 2 in the year 1992. It was not contended before me that the transfer of shares between Defendant Nos. 1 and 2 on the one hand and defendant Nos. 4 to 7 on the other, is illegal. It is a moot point whether the alleged illegality in transfer of shares would render every subsequent transfer although valid, invalid in perpetuity. My attention has not been invited to any provision of law or judgment on this point.

19. In the circumstances, the Notice of Motion is dismissed. However, the Defendants shall not dispose of, alienate, encumber or part with possession of the said 990 shares pending the hearing and final disposal of the suit without first informing the purchaser of the pendency of the suit, in writing.